

1992

City of Roy v. Gary D. Mecham : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Robert L. Froerer; The Public Defender Association of Weber County, Inc.; Attorney for Defendant; Attorney for Appellee.

Christopher G. Davis; Roy City Attorney; Attorney for Appellee.

Recommended Citation

Brief of Appellee, *City of Roy v. Gary D. Mecham*, No. 920367 (Utah Court of Appeals, 1992).
https://digitalcommons.law.byu.edu/byu_ca1/3310

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
50

A10

IN THE UTAH COURT OF APPEALS

DOCKET NO. 920367

CITY OF ROY,)	
)	
Plaintiff-Appellee,)	Case No. 920367-CA
vs.)	
)	
GARY D. MECHAM,)	Priority No. 2
)	
Defendant-Appellant.)	

BRIEF OF APPELLEE

APPEAL FROM A CONVICTION OF THEFT, A CLASS "B"
MISDEMEANOR, IN THE SECOND JUDICIAL CIRCUIT
COURT, STATE OF UTAH, COUNTY OF WEBER, ROY
DEPARTMENT, THE HONORABLE ROGER S. DUTSON
PRESIDING

Christopher G. Davis (#3782)
Roy City Attorney
5051 South 1900 West
Roy, Utah 84067
Telephone: 774-1020

Attorney for Appellee

Robert L. Froerer (#4574)
THE PUBLIC DEFENDER ASSOCIATION
OF WEBER COUNTY, INC.
Attorney for Defendant
2568 Washington Boulevard
Ogden, UT 84401
Telephone: 392-8247

Attorney for Appellee

FILED

- 7 1993

IN THE UTAH COURT OF APPEALS

CITY OF ROY,)	
)	
Plaintiff-Appellee,)	Case No. 920367-CA
vs.)	
)	
GARY D. MECHAM,)	Priority No. 2
)	
Defendant-Appellant.)	

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A CONVICTION OF THEFT, A CLASS "B"
MISDEMEANOR, IN THE SECOND JUDICIAL CIRCUIT
COURT, STATE OF UTAH, COUNTY OF WEBER, ROY
DEPARTMENT, THE HONORABLE ROGER S. DUTSON
PRESIDING

Christopher G. Davis (#3782)
Roy City Attorney
5051 South 1900 West
Roy, Utah 84067
Telephone: 774-1020

Attorney for Appellee

Robert L. Froerer (#4574)
THE PUBLIC DEFENDER ASSOCIATION
OF WEBER COUNTY, INC.
Attorney for Defendant
2568 Washington Boulevard
Ogden, UT 84401
Telephone: 392-8247

Attorney for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
JURISDICTION AND NATURE OF PROCEEDINGS	1
STATEMENT OF ISSUES PRESENTED ON APPEAL AND STANDARDS OF APPELLATE REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND RULES . . .	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	3
CONCLUSION	4

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>State v. Bagley</u> , 681 P.2d 1242, 1244 (Utah 1984)	4
<u>State v. Hurst</u> , 821 P.2d 467 (Utah App. 1991)	4
<u>State v. Moosman</u> , 794 P.2d 474 (Utah 1990)	2, 3
<u>State v. Reed</u> , 839 P.2d 878 (Utah App. 1992)	2, 4
<u>State v. Walker</u> , 743 P.2d 191 (Utah 1987)	1

CONSTITUTIONAL PROVISIONS, STATUTES ORDINANCES & RULES

Utah Code Ann. § 78-2a-3(2)(d), (f)	1
Roy City Ordinance 11-4-10	1, 2

IN THE UTAH COURT OF APPEALS

CITY OF ROY,)	
)	
Plaintiff-Appellee,)	Case No. 920367-CA
vs.)	
)	
GARY D. MECHAM,)	Priority No. 2
)	
Defendant-Appellant.)	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a conviction of theft, a class B misdemeanor, under Roy City Ordinance 11-4-10.

This Court has jurisdiction to hear this appeal under Utah Code Ann. §78-2a-3(2)(d)(f).

STATEMENT OF ISSUES PRESENTED ON APPEAL

AND STANDARDS OF APPELLATE REVIEW

The following issue is presented by the defendant for review:

Was there sufficient evidence to support the Judge's verdict?

The standard of review set forth by appellant is accurate but does not go far enough. While appellant is accurate with the standard set forth in State v. Walker, 743 P.2d 191 (Utah 1987), the trial court also made findings of fact which require additional review. In order to challenge the findings of fact made by the Judge, "the appellant must marshall all the evidence in support of the trial court's finding of fact and then demonstrate that the

evidence, including all reasonable inferences drawn therefrom, is insufficient to support the findings against attack." State v. Moosman, 794 P.2d 474, 475-6 (Utah 1990).

Finally, this Court has recognized that "Ultimately it is the province of the trier of fact to determine which testimony and facts to believe and what inferences to draw from those facts. State v. Reed, 839 P.2d 878, 879 (Utah App. 1992) quoting State v. Bagley, 681 P.2d 1242, 1244 (Utah 1984).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The defendant was convicted under Roy City Ordinance 11-4-10 which states "A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof."

STATEMENT OF THE CASE

Appellee agrees with appellant's statement and therefore does not submit additional information.

STATEMENT OF FACTS

Bruce McClellan, an employee of the Excel Store at 4395 South 1900 West in Roy City, was working at the store on January 31, 1992 (Tr. 6). At approximately 2:00-3:00 o'clock in the afternoon an older little white Datsun B-210 type car pulled up to one of the gasoline pumps (Tr. 8). Mr. McClellan indicated there was only one person in the car (Tr. 8). He stated this white Datsun was the only car in at that pump island (Tr. 9). The gas meter for the pump where the white Datsun was activated and the gas began to meter (Tr. 8, 9). Mr. McClellan then turned his attention

to help a customer. After three to four minutes he looked back out the window of the store and the white Datsun was gone (Tr. 9, 15, 16). The meter registered that under \$10.00 was pumped (Tr. 20). After the car left the pump island, the store manager Shari Abott entered the store (Tr. 9, 21). Mr. McClellan asked Ms. Abott if she had seen a little white car pull out (Tr. 21). Ms. Abott said there was a little white car by the side of the building (Tr. 21). Mr. McClellan later saw the same white car which received the gas leave the store parking lot (Tr. 22). Ms. Abott identified the driver of the white Datsun as the defendant (Tr. 41).

The defendant testified he was driving a white Datsun (Tr. 59). He stated he was at the Excel store on January 31, 1992 (Tr. 58). He also concurred with Mr. McClellan's testimony regarding the time of day being 3:00 or 3:30 (Tr. 58). The defendant testified he was only to drive to the halfway house and work and return (Tr. 63). His work place was located at 1849 West 2800 South (Tr. 64). The Excel store is located at 4395 South 1900 West (Tr. 3). There are a number of gas stations between the halfway house and defendant's place of employment. The Excel store is well beyond his place of employment (Tr. 65, 66, 67). The defendant testified he went to J.T.P.A. (Tr. 69). Kathy Cartwright from the Ogden Community Correction Center testified the defendant recorded 14 miles each day for the period between January 27 and January 31, 1992 (Tr. 75). She further testified the defendant filled out his own mileage log (Tr. 80). She further testified the mileage and gasoline usage were not verified by the halfway house staff (Tr.

81). She further testified the defendant would not be authorized to go to J.T.P.A. or beyond his place of employment (Tr. 83).

SUMMARY OF THE ARGUMENT

Defendant has failed to meet his burden of marshalling the evidence and then demonstrating that the trial court's findings of fact are insufficient to withstand attack. State v. Moosman, supra at 475-6.

ARGUMENT

The trial court made the following findings:

First, Mr. McClellan was a very honest individual (Tr. 110).

Second, that someone put gas in a car without paying for it (Tr. 111).

Third, the defendant Mr. Mecham was not too credible. (Tr. 112).

After reviewing the evidence, the trial court found, "that Mr. McClellan saw the very same vehicle at the air station as he did out there getting gas" (Tr. 112).

Finally, he found Mr. Mecham was the driver of the car. Mr. McClellan identified (Tr. 113).

The defendant argues that the trial court should have considered different aspects of the case. However, the defendant has failed to show how the findings made by the Court are insufficient or unreasonable. The trial court was within its province to make those determinations. State v. Reed, supra at 879. The defendant would have this Court have a de novo review of

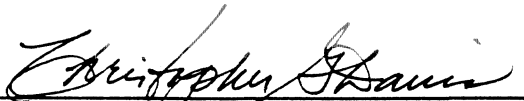
the facts which is beyond the scope of the Appeals Court.

The trial judge's findings were sufficiently comprehensive and pertinent to provide a basis for his decision. State v. Hurst, 821 P.2d 467, 471 (Ut. App. 1991).

CONCLUSION

Based upon the foregoing arguments, this Court should affirm the trial court's decision of guilt and the defendant's conviction.


Respectfully submitted this 7th day of May, 1993.



Christopher G. Davis
Roy City Attorney

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Appellee was mailed, postage prepaid, to Robert L. Froerer, Attorney for Appellant, at 2568 Washington Boulevard, Ogden, Utah 84401, this 7th day of May, 1993.



Christopher G. Davis